

## **RECORD OF THE DISCUSSION OF THE BAR-BENCH-MEDIA CONFERENCE**

A meeting of the Bar-Bench-Media Conference was held on Monday, November 20, 2006, at 12:00 p.m. in the 12th Floor Conference Room in the New Castle County Courthouse. The members of the Conference in attendance were:

### Members of the Electronic News Media:

Peg Brickley, Dow Jones

Chris Carl, WDEL

### Members of the Print News Media:

Rita Farrell, Reuters

Randall Chase, AP

Sean O'Sullivan, News Journal

### Members from the Bench:

Judge Peggy Ableman, Superior Court

Chief Judge Chandlee Johnson Kuhn, Family Court

### Members from the Bar:

N/A

Phil Milford of Bloomberg News and Sean O'Sullivan, of the News Journal were also in attendance.

The first agenda item was the approval of the draft minutes from the September 19, 2006 meeting of the Conference. Due to the lack of a quorum at the meeting, the draft minutes were not approved.

It was noted for the record that in the future when a physical quorum cannot be accomplished at a meeting, Conference members not in attendance should be contacted by telephone to effectuate approval of minutes. It was also suggested that for future meetings, the Conference will work more diligently to confirm that a quorum is present and make sure there is always telephone/video conference equipment in the meeting room. Additionally, the next meeting's agenda should include discussion on amending

the Conference's Constitution to change the required number of Conference members and change the quorum requirement. Currently, the Conference's Constitution can be found at <http://courts.delaware.gov/bbmc/constitution.htm>.

Rita Farrell moved to correct the draft minutes with regard to the following sentences:

*In light of the recent emails circulated among the Conference members, it was discussed that the Conference was open to the public under the Conference Constitution. Members of the public have been permitted to speak to the Conference in the past; however, the Conference is not a forum for dissatisfied litigants to seek redress. People asking to speak to the Conference have been limited to 5 minutes and are informed that they are not to talk about specific court cases.*

Rita Farrell noted that on the subject of public attendance at the Conference meetings, the Conference Constitution reads as follows:

*(b) Meetings of the Conference shall be open to the public and all records of the Conference shall be available for public inspection.*

Rita Farrell suggested that the draft minutes of September 19, 2006 should be corrected to note that the facts and the record show no party has ever used a Conference meeting "as a forum for dissatisfied litigants to seek redress," as the draft minutes imply.

Rita Farrell explained that at the meeting in question, a member of the public spoke for five minutes about his belief that the cost of litigation can result in limiting access to the courts. Conference members and reporters who are not members of the Conference but who regularly attend Conference meetings have raised the same concern. The

implication that a litigant sought redress was made in e-mails by a Conference member who did not attend the meeting in question. In fact, the Chair notified the member in advance of the meeting that a former litigant would attend to talk only about the cost of pursuing a complaint. The member thanked the Chair for the courtesy and chose not to attend.

The next items discussed were whether there should be a formal or new informal policy addressing whether members of the public may speak at Conference meetings and, if so, whether there will be a policy to allow those public speakers to be noted on the Conference meeting agenda. Chief Judge Kuhn suggested three alternatives with regards to members of the public speaking: (1) allow members of the public to attend meetings but not permit them to speak, (2) always allow members of the public to speak for five minutes each, or (3) permit members of the public to speak but on a case-by-case basis. Furthermore, it was suggested that if a member of the public who wishes to speak is to be placed on the agenda, (1) the Conference must be apprised of that individual's purpose in speaking (i.e. the subject matter must be germane to the purpose of the Conference) and (2) the individual's speech must not address case specific issues. Judge Ableman volunteered to collaborate with Vice Chancellor Strine for the purpose of drafting such policies.

The next item listed on the agenda addressed the ACCESS Subcommittee on Terminals and Lexis Nexis. The members acknowledged that the terminal is working well and the terminal in the press room works most of the time. It was noted that the public access terminal in the Court of Chancery is relatively easy to access, while the public access terminal in the Superior Court is more cumbersome. Judge Ableman

volunteered to personally go to the Superior Court's public access terminal to help resolve any access problems.

The next item on the agenda dealt with a meeting with Court Administrators. It was suggested by Chief Judge Kuhn that Court Administrators are invited to the Conference, particularly to the March 12th or May 14th meetings. The Court Administrators will be asked for a COTS update.

Chief Judge Kuhn made a suggestion that if Justice Jacobs is unable to attend a Conference meeting, maybe a law clerk can attend in his place. It was also noted that all members from the Bench should be able to send law clerks in their places.

The next item discussed addressed Superior Court issues. Judge Ableman explained that she received an e-mail from Chief Justice Steele regarding the News Journal's intent to run an article on the issue of opening the Superior Court to camera access by the media in civil non-jury trials. Judge Ableman reported that the next step could be camera access in civil jury trials. It was agreed that Superior Court issues should be excluded from the future Conference meeting agenda.

The next agenda item - Access/Media Concerns Involving the Court of Common Pleas - was skipped and it was decided that this item will be excluded from the next meeting's agenda.

The next item discussed concerned a workshop for courthouse reporters. There is a template for such workshop, and it is just a matter of this Conference deciding when to begin such workshop.

The next agenda item addressed was the video report on Disney. Kathy Jennings and Steve Taylor were supposed to get a report on video streaming. It was suggested that Kathy and Steve either report in person or by memo for the next meeting.

Next, the issue of updating the Conference membership list was discussed. Currently, the membership terms are three years, and the terms are staggered. Chief Judge Kuhn wants to solicit ideas for a start date for new members.

The next item discussed was the report on the Delaware Chapter of FOIA Conference. Rita Farrell reported on this issue. The National FOIA Coalition (“Coalition”) is headed by Professor Davis at University of Missouri. The purpose of the Coalition is to have open governments in all states. Currently, the Coalition has affiliates in 44 states. The new organization in Delaware is called DELCOG - Delaware Coalition for Open Government. Its focus is to include the General Assembly as part of the FOIA coverage and straighten out issues with the Attorney General’s Office. These FOIA issues, however, do not necessarily concern the Bar-Bench-Media Conference because the Conference does not fall under FOIA. DELCOG meetings take place on the first Monday of each month at noon at the News Journal office. All are welcome to attend.

The next item discussed concerned the selection of a new Vice Chairman and two new members for the Conference. The Vice Chairman position must be filled by an individual from the Electronic Media, and the two membership positions must be filled by members of the Delaware Bar.

Lastly, the resignation of Eugene Bayard was discussed. It was suggested that if future Conference meetings can be conducted by teleconference and/or video conference,

there would be a lesser likelihood that members from other counties would resign from the Conference.

The next Conference meeting will take place on Monday, January 8, 2007, at 12:00 p.m. in the 12th Floor Conference Room in the New Castle County Courthouse. Rita Farrell will attend the next meeting via teleconference. Chief Judge Kuhn must communicate with JIC to set the 12th Floor Conference Room with telephone and videoconferencing equipment.

There was no motion to adjourn because the Conference meeting lacked a quorum.